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No. A-918

IN THE SUPREME COURT OF THE
UNITED STATES

TERM

JOHN L. YOUNG and JOHN C. GILDEA,
PETITIONERS

v.

THE GREAT ATLANTIC AND PACIFIC TEA
COMPANY, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. Whether Petitioners' claim for accrued vacation benefits, made after the termination of their employment and the cessation of business at their place of employment by Respondent, is subject to the arbitration clause in the collective bargaining agreement.

2. Whether Petitioners' suit for breach of contract for Respondent's failure to pay accrued vacation benefits under a collective bargaining agreement is subject to the six-month statute of limitations of Delcostello v. Int'l. Brotherhood of Teamsters, 462 U.S. 151, 103 S. Ct. 2281, 76 L. E.2d 476 (1983), or the applicable state statute of limitations.

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PETITION FOR A WRIT OF CERTIORARI
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John L. Young and John C. Gildea, by and through their attorney, Stephen D. Wicks, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinions of the court of appeals (App. A, infra, 1a-4a) and the district court (App. B, infra,

5a-7a) are not reported.

JURISDICTION

The judgment of the court of appeals (App. A, infra, 1a-4a) was entered on March 7, 1985. On June 6, 1985, Justice Brennan extended the time in which to file a Petition for Writ of Certiorari to August 4, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Section 301 of the Labor-Management Relations Act, 61 Stat. 156, codified at 29 U.S.C. 185(a), provided:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court

of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

2. Section 10(b) of The National Labor Relations Act of 1935, 49 Stat. 453, as amended, codified at 29 U.S.C. Section 160(b), provided:

> Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint; Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person again whom such charge is made, unless the

person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing of the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the United States pursuant to section 2072 of Title 28.

STATEMENT

Petitioners were employed in the Altoona Division Warehouse of

Respondent, in Altoona, Pennsylvania, and were both members of Teamsters Local 110. On August 20, 1982, notice was given in writing by Respondent to Teamsters Local 110 that the Altoona Division Warehouse was to close and that the process would begin immediately. According to Respondent's letter, the warehouse would be providing "(l)imited service . . . for a short period of time until a complete transition is made to service the stores that remain open from another Division."

That transition was completed by October 8, 1982, the date on which the last of the merchandise in the Altoona Warehouse was shipped to other warehouses. However, most of the 105 employees received their

termination notices sometime in September of 1982 -- and some actually stopped working as early as August 26, 1982. Petitioners' employment was terminated, at the latest, on September 25, 1982. Both Petitioners had accrued vacation pay in the amount of $1,779.00 that was not paid upon termination.

The arbitration provision of the collective bargaining agreement (App. C, infra, 8a-10a), which Petitioners did not follow, states that "(s)hould a controversy, dispute, or disagreement arise during the period of this Agreement concerning the interpretation of the provisions of this Agreement, except that liability for wage claims shall not be subject to arbitration unless

involving a disputed interpretation of the provisions of the Agreement, there shall be no cessation or stoppage of work or lockout because of such controversy, dispute, or disagreement, but the difference shall be adjusted in the following manner:"; instead, they filed a class action suit in this Court of Common Pleas of Blair County, Pennsylvania, on February 23, 1984. Respondent filed a Petition for Removal to the United States District Court for the Western District of Pennsylvania on March 7, 1984, which was granted. Thereafter, Respondent filed a Motion to Dismiss. Judge Dumbauld, in his order (App. B, infra, 5a-7a) concluded that Petitioners were

required to pursue arbitration because the issue at hand required that the Agreement be interpreted and, therefore, is not within the wage claim exceptions set forth in Section 22.1 of that Agreement, which required that such claim, to be excepted from arbitration, not involve " . . . a disputed interpretation of the provisions of the Agreement . . ." Judge Dumbauld also held that this Court's holding in Delcostello v. Int'l. Brotherhood of Teamsters, 462 U.S. 151, 103 S. Ct. 2281, 76 L. E.2d 476 (1983), was applicable and precluded Petititioners' cause of action.

Judge Weis, writing the Opinion for the Third Circuit of Court of Appeals (App. A, infra, 1a-4a), affirm-

ed, concluding that the dispute did arise during the term of the collective bargaining agreement -- even though the business had been closed -- because the agreement was in effect until October 15, 1983 (the Agreement, which was to run for a three-year period, was effective on October 12, 1980). Alternatively, Judge Weis, citing Nolde Brothers, Inc. v. Local No. 358, Bakery and Confectionery Workers Union, 430 U.S. 243 (1977), indicated that grievance procedures in collective bargaining agreements may extend beyond the termination of the agreement, and that the federal policy of liberal interpretation of arbitration clauses compelled the conclusion he had reached.

REASONS FOR GRANTING PETITION

This case presents important issues regarding the application of the federal policy of liberally construing arbitration clauses and the applicable statute of limitations for claims raised for a breach of a collective bargaining agreement not covered by an arbitration clause. Both issues arise and are being presented to this Court because of the misapplication by the lower courts of prior decisions of this Court -- and because the result of those decisions is the foreclosure of a cause of action for breach of contract recognized in both state and federal courts for precisely the type of case Petitioners present to this Court.

1. The district court held that

the issue of Respondent's obligation to pay accrued vacation benefits involved the need to interpret the agreement, thereby subjecting the issue to the arbitration clause; and did not address the question of the express limitation of the arbitration provision to issues arising during the contract vis-a-vis the closing of the warehouse and termination of the employees. The arbitration clause excludes wage claims from its operation unless they involve " . . . a disputed interpretation of the provisions of the agreement," which requirement does not exist in this case since the contract does not address the question at all, thus making the issue a question of Pennsylvania law rather than

contract interpretation. Arbitration cannot be compelled where the parties agree only to arbitrate disputed constructions of the collective bargaining agreement and the issue at hand does not involve the construction of the agreement. Local 210, Int. Printing Press and A.U. v. Times-World Corporation, 381 F. Supp. 149, 152 (1974).

The Third Circuit, conversely, did not address the interpretation issue and ruled that the issue did arise during the term of the Agreement. To reach this conclusion, the court had to argue that the collective bargaining agreement was in effect for its term of three years, even though the employees had been terminated and the warehouse closed, extinguishing all activity under

the contract. This conclusion is contrary to Flintkote Co. v. Textile Workers' Union of America, 243 F. Supp. 205, 208 (1965), where it was held that a labor agreement is in effect only so long as the underlying employer-employee relationship continues.

Judge Weis then argued in the alternative that even if the contract was terminated this court's holding in Nolde Brothers, Inc. v. Local No. 358, Bakery and Confectionery Workers Union, 430 U.S. 243 (1977) would bring about the same result. In doing so the court failed to recognize the distinction in Nolde between an arbitration clause that failed to limit the subject matter and timing of issues and those that narrow their

own scope, the former being the type that generated the holding in Nolde, while the latter is the type at issue. The clause in question states that the dispute must arise " . . . during (emphasis added) the period of this Agreement . . ." Clearly Judge Weis erred in his application of Nolde.

2. Assuming the correctness of Petitioners' position regarding the arbitration issue, both the District Court and the Third Circuit were incorrect in applying the statute of limitations of Delcostello to the case at hand (Petitioners acknowledge that if they were required to arbitrate Delcostello would apply). In applying the six-month statute of limitations from Section 10(b)

of the National Labor Relations Act, 49 Stat. 453, as amended, codified at 29 U.S.C. Section 160(b), to suits by employees against employers and unions, this Court expressly recognized the differences between actions of that sort and those that are more analagous to a standard breach of contract suit. In the process the Court reaffirmed Auto Workers v. Hoosier, 383 U.S. 696, 16 L.Ed 2d 192, 86 S. Ct. 1107 (1966), which is virtually identical to the case at hand since it involved a suit by a union against an employer for accrued vacation benefits following the termination of the employment of the union members. The Court held that the Indiana statute of limitations for unwritten contracts was to be applied.

The nexus between Delcostello and the National Labor Relations Act was the need to prove the union's breach of duty to its members to establish a claim against either the employer or the union. That burden did not exist in Auto Workers v. Hoosier, supra, and is not present in the case at hand, because the issues did not need to be arbitrated. Moreover, the salient policy consideration in Delcostello behind achieving a nationally uniform statute of limitations -- the expedient resolution of issues regarding collective bargaining and private dispute settlement -- was not present in Auto Workers v. Hoosier, supra, or the case at hand due to the termination of the business relationship. Business will not be hampered

by a longer dispute settlement process that would be afforded to Petitioners through the application of the state statute of limitations.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

FOREMAN and WICKS

By
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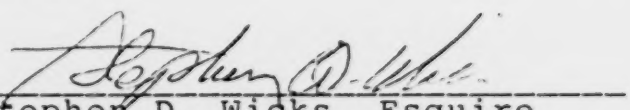
CERTIFICATE OF MAILING

The undersigned, a member of the Bar of the United States Supreme Court, hereby certifies that he caused to be mailed this 4th day of September, 1985, postage pre-paid, first class, the following copies of this Petition.

Forty (40) copies to the Clerk, United States Supreme Court, Washington, D.C., 20543; and

Three (3) copies to William Bevan, III, Esq., Robert A. Prorok, Esq., and Mark A. Fontana, Esq., Reed, Smith, Shaw & McClay, Two Mellon Bank Center, Pittsburgh, PA, 15219.



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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

84-3495

JOHN L. YOUNG and JOHN C. GILDEA,

Appellants

v.

THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC.,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(D.C. Civil No. 84-0575)

District Judge: Honorable Edward Dumbauld

Submitted Under Third Circuit Rule 12(6)
February 27, 1985

Before: ADAMS, WEIS and WISDOM,*
Circuit Judges

Filed MAR 7 1985

MEMORANDUM OPINION OF THE COURT

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* Honorable John M. Wisdom, United States Circuit Judge for the Fifth Circuit, sitting by designation

WEIS, Circuit Judge.

Plaintiffs were employed at the Altoona Division Warehouse of the defendant until September 25, 1982, a short time before the facility closed. In their complaint, plaintiffs allege that they did not receive accrued vacation pay which was due on their termination. Plaintiffs did not file a grievance with the company or the union.

The district court determined that the dispute was within the grievance provisions of the collective bargaining agreement, and that plaintiffs, having failed to exhaust those procedures, were barred from proceeding

in court. The district court concluded that since the present case had not been filed until February 21, 1984, the six month statute of limitations had run, DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983).

Plaintiffs contend that their dispute was not within the grievance provisions of the labor contract because the controversy did not arise "during" the existence of that agreement. We reject that contention. By its terms, the collective bargaining agreement was in effect until October 15, 1983. Moreover, grievance procedures set out in a collective bargaining agreement may extend beyond its termination. Nolde Brothers, Inc. v. Local No. 358, Bakery &

Confectionery Workers Union, 430 U.S. 243 (1977).

We are also persuaded that the federal labor policy of broad and liberal interpretation of arbitration clauses requires that we hold the dispute here comes within the grievance procedures of the labor contract.

Accordingly, the judgment of the district court will be affirmed.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Weis
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

JOHN L. YOUNG and JOHN C. CHILDER Plaintiffs,	) Civil) Action)No. 84-575
v.	)
THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, INC., Defendant.	)

O R D E R

AND NOW, this 10th day of July, 1984, upon consideration of defendant's motion to dismiss and of briefs in support thereof, and in opposition thereto, and it appearing that the complaint alleges that defendant, upon closing its plant and terminating plaintiffs, failed to pay plaintiffs vacation benefits to which, by virtue of hours worked, they were entitled

to under section 14 of the collective bargaining agreement; and it appearing that this claim invokes the interpretation of said agreement, and therefore is not excepted from the requirements of grievance and arbitration provided by Sec. 22 of said agreement; and it also appearing that the said complaint was filed on February 21, 1984, and the claimed benefits allegedly occured in 1982, and that DiCostello v. Teamsters, 76 L. Ed. 2d 476, 482 (1983) held that a six months statute of limitations was applicable against both the employer and the union

IT IS ORDERED that the above-styled action be and the same

hereby is dismissed.

/s/ Dumbauld
U.S. Senior District
Judge

SECTION 22. GRIEVANCE/ARBITRATION/ ADJUSTMENT

22.1 Should a controversy, dispute, or disagreement arise during the period of this Agreement concerning the interpretation of the provisions of this Agreement, except that liability for wage claims shall not be subject to arbitration unless involving a disputed interpretation of the provisions of the Agreement, there shall be no cessation or stoppage of work or lockout because of such controversy, dispute, or disagreement, but the difference shall be adjusted in the following manner:

Step #1 - Accompanied by his shop steward, the aggrieved employee shall take up the grievance with his immediate supervisor.

Step #2 - In case of failure to arrive at a decision in the first step, the grievance shall be submitted to the Employer in writing, within five (5) days of its occurrence, and taken up by the parties in Step #1, and/or Union officials with the Warehouse Manager.

Step #3 - In case of failure to arrive at a decision in Step #2, the grievance may be referred, within three (3) days, to the parties in Step #2 with the Director of Warehousing and Distribution.

Step #4 - In case of failure to arrive at a decision in Step #3, the grievance shall be referred to a two (2) man committee, consisting of one (1) member designated by the Union and one (1) member designated by the Employer, signatories to this Agreement.

Step #5 - In the event the committee in Step #4 cannot reach agreement within three (3) days, either party may submit, within said period, the grievance to arbitration by giving written notice, stipulating the controversy, dispute, or disagreement, to the other party.

22.2 In the event arbitration becomes necessary, each party shall, within ten (10) days of written arbitration notice, select a person for the three (3) member Arbitration Board.

These two persons so selected shall agree upon a third person who shall act as chairman of the Arbitration Board. If agreement between the two cannot be reached as to the third person within five (5) days after their appointment, the United States Federal Mediation and Conciliation Service shall be asked to appoint a third person. A majority decision of the Arbitration Board shall be rendered without undue delay and shall be final and

binding on both parties. The expense, if any, of the third party shall be shared equally by the parties hereto.

22.3 No grievance shall be discussed unless the outlined procedure has been followed. However, issues concerning application in interpretation of the terms of this Agreement may arise of a general nature affecting or tending to affect more than one (1) employee in the Bargaining Unit. Such issues need not be subject to the entire grievance procedure but may be initiated at any step deemed proper by the party to this Agreement bringing the grievance prior to Step #4.

22.4 In any event grievances must be filed in writing, to the Personnel Department, withing five (5) days, after their occurrence, otherwise there shall be no grievance.

SECTION 23. STRIKES AND LOCKOUTS

23.1 The Grievance and Arbitration procedures shall be the sole method for the resolution of grievances arising under the terms of this Agreement.

23.2 There shall be no strike, slow-down, stoppage of work, interference with, or interruption to the Employer's business by the employees or the Union, nor shall there be any lockout by the Employer during the term of this Agreement.